DATO' MOHD. TAHIR ABDUL RAHIM & ORS.

v.

SYKT. PERMODALAN KEBANGSAAN BHD. & ORS.

HIGH COURT MALAYA, KUALA LUMPUR
VC GEORGE J
[ORIGINATING SUMMONS NO. D3-24-253-90]
14 DECEMBER 1990

COMPANY LAW: *Contract with foreign company - Certain conditions imposed by Foreign Inrestment Commitee - Provision of detailed information to shareholders - EGM notice and explanatory circular as to general business to be conducted at EGM - Chairman's letter - Extent of information which should be given to shareholders - Frank, open, clear and satisfactory - One-sided agreement - Misleading or inadequate - Article of association - Companies Act 1965, s. 132C.*

The plaintiffs are shareholders of the first defendant company SPK. The 1st to 4th plaintiffs are also directors of SPK as are the 3rd to 7th defendants. The 3rd defendant D3 is the chairman of SPK and the 2nd defendant, D2 is a wholly-owned subsidiary of SPK and was incorporated for the purpose of developing land belonging to SPK (the said land). D2 entered into an agreement with a Singapore company, Y & O, for the development of the said land into a golf course, club house and residential units.

The Foreign Investment Committee, FIC, stated that it had no objection as long as the approval of SPK's shareholders were obtained after the directors had circulated to the shareholders details of the said project. A notice with an explanatory circular was issued to SPK's shareholders giving notice of an extraordinary general meeting (EGM) to be held. The purpose of the EGM was to approve and ratify the agreement with Y & O and the use of the lands as security to raise funds for the development of the said lands. This was followed by a letter from D3 to each of SPK's shareholders whereby he referred to the agreement and the need to approve the proposed resolutions.

The plaintiffs then commenced proceedings by way of originating summons for a declaration that the notice of EGM and explanatory circular issued by SPK under the authority and approved by D3, D4, D6 and D7 are misleading and invalid and other related orders.

On 4 October 1990, the plaintiffs obtained an *ex parte* order restraining the holding of the proposed EGM and from carrying into effect the agreement with Y & O until the disposal of the originating summons. The defendants applied for the order of 4 October 1990 to be set aside; however since the originating summons was ready for disposal, the Court heard the matters together.

The issue for the Court was whether the notice and explanatory circular complied with s. 132C of the Companies Act 1965 (the Act), the FIC conditions, Article 72 and 74 of the Article of association as to the extent of information which was supplied to the shareholders in the notice and explanatory circular.

Held:

[1] Both on principle and precedent, D3's letter written in the context of the impending EGM and purporting to deal with the business to be transacted there had to be treated as part of the information given by SPK pursuant to Article 72 and the FIC condition.

[2] Any attempt made by directors to obtain the sanction of shareholders must be made on a fair and reasonably full statement of facts upon which the directors are asking the shareholders to vote.

[3] The information contained in the circular does not include the relevant matter of acreage, nor to the number of building units involved, the type of buildings and specification thereof, the nature of the "other facilities", the purpose of the buildings planned and built by Y & O and whether D2 will be entitled to any amounts over and above the guaranteed RM50 million. A perusal of the said agreement also shows that the agreement itself does not provide particulars or specifications.

[4] An examination of D3's letter to the shareholders shows that D3 had not improved on the notice and circular in respect of details of the joint venture proposals other than to say that the FIC believes that the proposed joint venture is "good".

[5] The agreement was not sent to the shareholders and it is not sufficient that the agreement was available for inspection.

[6](a) It appears from the agreement that neither SPK nor D2 would have any say in the developments whether it be a golf course, club house, other facilities or the building units - it is difficult to accept that the shareholders would ratify such an agreement which appears to be without even basic safeguards;

(b) it was also not disclosed to the shareholders that under the agreement, Y & O or its nominees will be allowed to sell the club membership and the building units and keep the proceeds, with D2 getting only RM50 million.

[7](a) Without the full particulars and specifications of club membership and the amount expected to be raised, of the club itself and the "other facilities" and of the building units, be they residential or commercial units, it cannot be said that adequate information was made available for the shareholders to decide on the issues before the EGM;

(b) in addition, Y & O will be entitled to charge the whole of the said land to raise funds and there does not appear to be any provision for the discharge of the charge.

[8](a) The information given in the notice, circular and D3's letter is not frank, not open, not clear and not in any way satisfactory;

(b) not only is the circular and D3's letter most artfully framed to mislead the shareholders reading them but the agreement, approval and ratification which is sought is also most artfully framed to conceal the true nature of the transaction which is more in the nature of an outright sale of portions of the land and far from being a joint venture in the popularly accepted sense of the phrase - it is also drafted to conceal the one-sided nature of the agreement which was in favour of Y & O and its nominees;

(c) the statement by D3 that FIC approved because they believed it was a joint venture that is very good, was misleading as it is difficult to accept that anyone, least of all a government agency would have given *his or her* stamp of approval to the one-sided agreement that the agreement on its face appears to be.

[Plaintiffs' declaration granted.]

Cases referred to:
Baillie v. Oriental Telephone & Electric Co. Ltd. [1915] 1 Ch 503
Jackson & Ors. v. The Munster Bank Ltd. [1884] 13 LR 1r 118
Kaye v. Croydon Tramways Co. [1898] 1 Ch 358
Pacific Coast Coal Mines Ltd. v. Arbuthnot [1917] AC 607
Tiessen v. Henderson [1899] 1 Ch 861

Legislation referred to:
Companies Act 1965, s. 132C

For the Plaintiffs - Peter Yip (Chong Poh Ken with him); M/s. Peter Yip & Yong
For the Defendants - Rabindra Nathan (Shanti Mogan with him); M/s. Shearn Delamore & Co.

JUDGMENT

VC George J:

Each of the plaintiffs is a shareholder of the 1st defendant company, Sharikat Permodalan Kebangsaan Berhad (SPK). The 1st, 2nd, 3rd and 4th plaintiffs are directors of SPK as are the 3rd to 7th defendants. The 3rd defendant is the Chairman of SPK. He apparently is more than the person chairing board meetings. He apparently has executive powers and is referred to as the Executive Chairman of SPK. The paid up capital of SPK was RM82,778,634.

The 2nd defendant company, Angsana, is a wholly owned subsidiary of SPK. Angsana was incorporated for the purpose of developing some 1000 acres in the outskirts of Kuala Lumpur of what was known as Edinburgh Estate which or portions of which is now known as Bandar Menjalara. The registered owner of the land is SPK. The paid up capital of Angsana is RM21,777,000.

Angsana entered into a written agreement dated 1 June 1990 with a Singapore company called Y & O Pte Ltd. (Y & O) in respect of the development of part of Bandar Menjalara. The land has apparently been divided into numbered parcels. The agreement apparently was entered into pursuant to Y & O proposing to Angsana that it be appointed to undertake the development and construction of:

(i) a golf course on parcel 17;

(ii) a club house together with other recreational and sporting facilities (hereinafter collectively referred to as 'the other facilities') on parcel 18; and

(iii) residential units on parcels 14, 15, 16, 19 and 20 comprised in phase 6 and both residential and shophouse units and other buildings on the whole of phase 7

(hereinafter collectively referred to as 'the project')

Now, s. 132C of the Companies Act *inter alia* provides that the directors of a company shall not carry into effect any proposal or execute any transaction for the

> disposal of a substantial portion of the company's undertaking or property which would materially and adversely affect the performance or financial position of the company unless the proposal or transaction has been approved by the company in general meeting.

Article 74 of the Article of Association of SPK *inter alia* provides that all business transacted at an Extraordinary General Meeting (EGM) shall be deemed special and Article 72 has in it provisions to the effect that in the case of special business to be transacted at meetings the "general nature of such business shall be given to the members by notice"

The proposed transaction the subject of the agreement with Y & O needed the approval of the Foreign Investment Committee (FIC). This was sought. The FIC in stating that it had no objection to the proposal put to it however imposed certain conditions including the condition that SPK obtains the approval of the shareholders after the directors of SPK had circulated to the shareholders details of the proposed project which details

> should consist among other things, detailed information on this proposal including the mechanism and allocation of profits in the management of the golf course and hotel as stated in para. 1.2.4 to fully guarantee the interest of Angsana and its shareholders.

Pursuant to these requirements, a notice with an "Explanatory Circular" dated 18 September 1990 was issued to the shareholders of SPK giving notice of an EGM to be held on 5 October 1990 to approve and ratify the said agreement of 1 June 1990 with Y & O as well as to, in effect, approve Y & O or its nominees using the lands the subject of the agreement as security for them to raise funds for the development of the lands. This was followed by a letter dated 29 September 1990 from the 3rd defendant in his capacity as Executive Chairman of SPK to each of the shareholders in which he referred to the agreement and of the need for the shareholders to approve the proposed resolutions.

The plaintiffs contend that such an EGM had to be called because of s. 132C of the Companies Act and because of the FIC requirement that it be called. The plaintiffs also contend that because of the terms of Article of Association 72 and 74 of SPK, the shareholders were required to be furnished with a notice giving the general nature of the business to be transacted at the EGM, and because of the terms of the requirement imposed by the FIC, the notice should go beyond just the general nature but condescend to detailed information "including the mechanism and allocation of profits in the management of the golf course and hotel" (which are the words used by the FIC in its directive). The plaintiffs contend that not only do the said notice and circular and the chairman's letter fall far short of these requirements but their contents are calculated to, and in any event, would mislead the shareholders as to the true nature of the transaction.

On 4 October 1990 the plaintiffs obtained an *ex parte* order restraining the holding of the proposed EGM and from carrying into effect the agreement with Y & O until the disposal of this originating summons or until further order.

The defendants applied to have the orders made on 4 October 1990 set aside. However, since the originating summons was itself ready for disposal it was decided to stand over the defendants' application and hear it together with the originating summons which as amended seeks the following orders and directions:

(a) Declaration that the Notice of Extraordinary General Meeting and Explanatory Circular dated 18 September 1990 issued by the 1st defendant under the authority of and approved by the 3rd, 4th, 6th and 7th defendants are misleading and invalid;

(b) an order to restrain the 1st defendant, its agents or servants from convening and proceeding with the Extraordinary General Meeting set to be held on 5 October 1990 until disposal of the action or until further order of the Court;

(c) an order that the 1st defendant do forthwith cause an independent valuation of the land held under P.T. No. 8596, 8597, 8598, 8599, 8699, 8601, 8602, 8605, 8606, 8608, 8609, 8614, 8604 and 8607 all in the Mukim of Batu, Kuala Lumpur, Wilayah Persekutuan to be made by a firm of valuers approved by the Board of Directors and any two of the first four named plaintiffs herein;

(d) an order that in any Extraordinary General Meeting to be convened by the 1st defendant, the notice of such meeting shall include an independent report by the dissenting directors, namely the 1st to 4th plaintiffs or any of them;

(e) an order that the 2nd defendant be restrained from carrying into effect the agreement dated 1 June 1990 or executing any further transaction pursuant thereto until the agreement and any ancillary transaction arising therefrom shall have been duly approved by the shareholders of the 1st defendant in a properly constituted Extraordinary General Meeting or until further Court Order;

(f) an order that the defendants do pay the costs of this suit; and

(g) such further or other relief that this Honourable Court shall deem fit and just.

Because of the terms of s. 132C of the Act and in any event because of the said condition imposed by the FIC there can be no question that the EGM had to be called and the defendants do not say otherwise, no doubt because the subject matter of the transaction was said to be worth at least RM50 million and a substantial part of the land bank of SPK was to be utilised. It is clear that pursuant to the terms of Article 72 of the Article of association notice of at least the general nature of the business to be transacted at the EGM should be given to the shareholders. It is equally clear that the details required to be given to the shareholders imposed by the FIC had to be implemented. The stand taken by the defendants is that the required EGM was duly called for and sufficient information in respect of the business to be transacted at the meeting had been given to the shareholders and that such information was not misleading as alleged or at all.

A side issue raised was whether the chairman's said letter of 29 September 1990 to the shareholders was to be treated as part of the information given to the shareholders pursuant to the requirements of Article 72 and the directive given by the FIC.

The chairman's letter was sent in his capacity as chairman of the company. It was meant to deal with and dealt with the business to be transacted at the EGM. It was clearly designed to be read with the earlier notice of the meeting and circular. It starts off by referring to "the circular that I have sent to you on 18 September 1990 ..." [*vide* translation which is Exhibit MT-9 to encl. (21)].

In *Baillie v. Oriental Telephone & Electric Co. Ltd*. [1915] 1 Ch 503 and in *Jackson & Ors. v. The Munster Bank Ltd.* [1884] 13 LR 1r 118, in the context of the need by a company to give notice of the general nature of the business to be transacted at an EGM it was the chairman's statement that was referred to as giving the required information. It seems to me that both on principle and on precedent the chairman's letter written in the context of the impending EGM and purporting to deal with the business to be transacted there has to be treated as part of the information given by the company pursuant to Article 72 and pursuant to the requirement to do so by the FIC.

It is relevant to consider why the shareholders should be given the information and the extent of the information that has to be given to them and the effect of not meeting the requirements of doing so.

In *Baillie v. Oriental Telephone & Electric Co. Ltd.* (*supra*) the sanction of the shareholders was required and the directors summoned an EGM stating the resolutions to be passed and accompanied the notice with a circular, professing to explain the object and effect of the proposed resolutions which *inter alia* involved sanctioning the directors retaining substantial sums of money for themselves. Lord Cozens-Hardy MR said at p. 514,

> I do not go so far as to say that the shareholders of the Oriental Company might not honestly agree, on full information with regard to the facts, to the directors retaining in the past, and keeping in the future, this large remuneration for their services, but I am very clear in my own mind that if any attempt is to be made by the directors to get the sanction of the shareholders it must be made on a fair and reasonably full statement of the facts upon which the directors are asking the shareholders to vote. This notice coupled with the circular, and I think also with the statements made by the chairman at the meeting, seems to me to be not frank, not open, not clear, and not in any way satisfactory.

The Master of the Rolls went on to talk at p. 515 of the effect of this finding:

> I feel no difficulty in saying that special resolutions obtained by means of a notice which did not substantially put the shareholders in the position to know what they were voting about cannot be supported, and in so far as these special resolutions were passed on the faith and footing of such a notice the defendants cannot act upon them.

In *Kaye v. Croydon Tramways Co.* [1898] 1 Ch 358 (which Cozens-Hardy MR had applied in *Baillie*) Lord Lindley MR talked at p. 368 of the notice that had to be sent to the shareholders where their sanction was needed in respect of the special business:

> Now comes the question - to my mind a difficult question - whether, in ordinary fairness of language, one can say that this notice does, to use the words of the Companies Clauses Act, "specify the purpose for which the meeting is called." On behalf of the company it is argued that it does - that the purpose is to confirm the agreement. That, no doubt, is true by the card, but, in my opinion, this notice has been most artfully framed to mislead the shareholders. It is a tricky notice, and it is to my mind playing with words to tell shareholders that they are convened for the purpose of considering a contract for the sale of their undertaking, and to conceal from them that a large portion of that purchase-money is not to be paid to the vendors who sell that undertaking. I am perfectly alive to the danger of putting into notices, especially notices by advertisement, more than the Act of Parliament requires, and I agree that all that the Act of Parliament requires is that the purpose shall be stated. But it must be stated fairly: it must not be stated so as to mislead.

In *Pacific Coast Coal Mines Ltd. v. Arbuthnot* [1917] AC 607 the Privy Council in its advice succinctly stated at p. 618 what the notice should tell the shareholders:

> Their Lordships are of the opinion that to render the notice a compliance with the Act under which it was given it ought to have told the shareholders, including those who gave proxies, more than it did. It ought to have put them in a position in which each of them could have judged for himself whether he would consent, not only to buying out the shares of directors, but to releasing possible claims against them. Now this is just what it did not do, and therefore ... their Lordships are of opinion that the notice was bad, and that what was done was consequently *ultra vires*.

In *Tiessen v. Henderson*, Kekewich J explained at p. 870 [1899] 1 Ch 861 what the point of the notice was:

> If a meeting properly convened, and properly instructed as to the purpose for which it is convened, chooses to assent to this, there is no reason why it should not do so; but I think it ought to have the opportunity of considering the point. The man I am protecting is not the dissentient, but the absent shareholder - the man who is absent because, having received and with more or less care looked at this circular, he comes to the conclusion that on the whole he will not oppose the scheme, but leave it to the majority. I cannot tell whether he would have left it to the majority of the meeting to decide if he had known the real facts. He did not know the real facts; and, therefore, I think the resolution is not binding upon him.

In my opinion the *ratio decidendi* in those judgments equally apply here in dealing with the 72nd article of SPK and even more so in dealing with the FIC requirement which, it will be remembered, directs that detailed information be given.

For the plaintiffs it was contended that circular and the chairman's letter instead of elucidating and clarifying a difficult agreement were calculated to mislead the shareholders -in any event, it was further contended, those documents would not give a reasonably informed person reading them a true picture of the real legal and financial implications of the Y & O agreement.

The issue then is whether the information given by means of the notice, circular and the chairman's letter misleads and in any event whether it is adequate. The adjudication of those issues call for a study of the agreement that the EGM was to approve and ratify and of the notice, circular and the chairman's letter. It has to be borne in mind that the shareholders were not given a copy of the agreement.

As to the notice and circular the emphasis therein is that the agreement, approval and ratification of which was sought, is a joint venture development (JVD) proposal with a guaranteed profit of RM50 million to be paid in installments, RM2 million within one year of the end of mobilization period (which is 6 months after issue of the "last approval" from the FIC) and within each of the years thereafter, 3, 5, 5, 15 and 20 million ringgit respectively.

The "main terms" of the JVD are purported to be given which as given in the circular, is that Angsana appoints Y & O to plan, design, develop and build "building units" on "building lots" and a "golf course and other facilities" the costs of which will be met by Y & O which costs to include payment of all fees, premiums, quit rent, assessment and any other government levies. The building units are to be completed by Y & O within 5 years, and the "golf course and other facilities" in 3 years. When the "golf course and other facilities" are completed Y & O has the right to "manage and run the operation" for 30 years with an option to extend the period for another 30 years. After the first 30 years Angsana can on terms determine the management contract. The profits of the operation will be shared between Y & O and Angsana in the ratio 70:30.

An obviously relevant matter would be the acreage involved. That is not given. The only reference to acreage is in Appendix I of the circular which gives information concerning Angsana. In that Appendix Bandar Menjalara is stated to cover 1,038 acres. The development of the Bandar envisages according to the Appendix a Town Centre consisting of 72 acres, an 18 hole golf course to be built according to "international standards" and a public park of 30 acres. These particulars do not seem to have any reference or nexus to the JVD proposal of Y & O.

Further, how many building units are involved, the land area involved in respect of each unit, the type of building and specifications thereof, the acreage involved in the golf course, the particulars and specifications of the buildings in relation to the Golf Club, what the "other facilities" are, are all not disclosed. As to the acreage it would seem that the whole of the 1038 acres is not to be developed by the JVD proposal with Y & O because there is a reference to Angsana being able to concentrate on developing the remaining phases of Bandar Menjalara which is estimated to consist of some 6,363 building units.

Further what happens to the buildings planned and built by Y & O is not disclosed. *Inter alia*, are they to be sold, who sells them, does Angsana or SPK have a share of the profits from the sale are all not disclosed.

Obviously a monetary return is expected from the development. RM50 million is guaranteed. Will Angsana be entitled to any amounts over and above that? *Per se* the circular is not clear on that. As the emphasis in the circular is that it is a Joint Venture Development, it seems to me that some shareholders reading the circular would be left with the impression that the undisclosed number of buildings will be sold and the profits shared, Y & O guaranteeing a minimum of RM50 million.

Moving on to the chairman's letter, it is seen that he states that he believes that the shareholders have read the circular (that I have sent to you on 10 September 1990) which contains "all details that you ought to know concerning this joint-venture proposal."

He goes on to say that he is happy "that this joint-venture will ensure that our company obtains a profit of RM50 million" other than the guaranteed 30% profit from the operation of the Golf Club. He then refers to Y & O as "our partner" who will begin the construction work as soon as possible. This would, he points out, increase the price of Angsana land other than that involved in the JVD. He then refers to the FIC approval.

> We have obtained the approval from the government because FIC believes this is a joint venture that is very good and it will raise the net tangible assets of the shares of the SPK group.

He hopes shareholders will attend and vote on the proposals. If they cannot attend he requests them to give him or certain other named director proxies.

The chairman then moves on to talk of the past achievements of the SPK group and of the future developments before ending the letter. It seems to me that he had not improved on the notice and circular in respect of details of the JVD proposals other than to say that the FIC believes that the proposed joint-venture is "very good".

The agreement with Y & O was, as has been noted, not sent to the shareholders. They were however told that the agreement was available for inspection. That does not help. As was said in the passage cited above in the Kekewich J judgment in *Tiessen v. Henderson* (*supra*).

> The man I am protecting is not the dissentient

(that is the shareholder who attends and inspects the documents made available at the office of the company) "but the absent shareholder."

The agreement was exhibited in Court. It is divided into "sections". The acreage to be developed is purported to be shown in s. 1.02 to be read with the First Schedule. The First Schedule suggests that the acreage for the golf course is 172.14 acres. However s. 1.02 seems to suggest that it is either 245.42 acres or 155.18 acres. As to "building use" the First Schedule refers to the aggregate of 73.22 and 130.63 acres while s. 1.02 refers to 130.63 acres. What is clear is that the lands contained in what is designated as phase 6 and phase 7 are the subject of the agreement and these two phases consist of 376.05 acres (referred to in the agreement as "the said lands"). What is equally clear is that neither the notice and circular nor the chairman's letter disclose the acreage involved although it represents over a 3rd of the land bank of the company.

It is not proposed to analyze the agreement section by section. For the purpose of this judgment it is sufficient that certain aspects of it be highlighted.

It has been pointed out earlier in this judgment that the notice and circular and the chairman's letter *inter alia* do not give particulars, not to speak of specifications, of the golf course and club house and of the building units to be established and/or built. A perusal of the agreement provides an explanation not necessarily acceptable, the explanation being that the agreement itself startlingly does not provide such particulars or specifications.

What Angsana is obliged to do under the agreement is to hand over "the said lands" that is the 376.05 acres to Y & O (or its nominees) who are given *carte blanche* to develop the lands. There is no provision in the agreement in respect of any specification in respect of any aspect of the proposed development. It would appear that neither Angsana nor SPK would have any say in the developments whether it be the golf course, club house, other facilities (no details whatsoever of which is given) or the building units. It would appear that once a guarantee for the payment of RM50 million is given to Angsana there is nothing other than perhaps public opinion to prevent Y & O from providing as a club house an attap shed and reducing the "other facilities" to, say, a sand pit for children to play in! There is, it seems nothing to prevent Y & O from creating in the area reserved for "building units" one large slum which would put paid to the chairman's expectation that the development by Y & O would enhance the value of the rest of the land belonging to SPK!

It is relevant to observe that it is difficult to accept that the shareholders would ratify such an agreement which appears to be without even basic safeguards.

Another aspect of the agreement not disclosed to the shareholders that has to be highlighted is that by the agreement Y & O or its nominees will be allowed to sell the club membership and the building units and keep the whole of the proceeds for themselves. What Angsana gets is only the RM50 million. Counsel for the plaintiffs in advancing their arguments that it was relevant for these aspects to be disclosed to the shareholders before the EGM speculated perhaps not unreasonably, that given an optimum membership of 3000 at a membership fee of RM50,000, RM150 million could be raised. Even at RM25,000 from 2,000 members RM50 million would be raised. It was argued and I agreed with the submission that without the full particulars and specifications of club membership and the amount expected to be raised, of the club itself and the "other facilities" and of the building units be they residential units or commercial units, it cannot be said that adequate information for the shareholders to decide on the issues before the EGM was made available.

I further agree with the submission by learned Counsel for the plaintiffs that to call or refer to the project as a joint venture proposal is misleading.

It is quite obviously an outright sale of the lands but not including the land on which the golf course is to be established the consideration for the sale being RM50 million (which could be paid in agreed installments) as well as Y & O establishing a golf course up to international standards and building a golf club and "other facilities" the dimensions and specifications of which appear to be in the absolute discretion of Y & O.

Another aspect to be highlighted is that Y & O will be entitled to charge the whole of the said lands to raise funds and there does not appear to be any provision for the discharge of the charge.

Given the lack of clarity of some of the sections some of which I have highlighted, and given the startlingly one-sided provisions in the agreement some of which I have highlighted, it seems to me that the information given in the notice, circular and the chairman's letter is, to use the words of Lord Cozens-Hardy MR in *Baillie* (*supra*),

> not frank, not open, not clear and not in any way satisfactory.

In *Kaye v. Croydon Tramways Co.* (*supra*) Lord Lindley MR referred to the notice there as being

> most artfully framed to mislead the shareholders.

In the instant case I am constrained as it is relevant to do to observe that not only is the circular and the chairman's letter most artfully framed to mislead the shareholders reading them but the agreement, approval and ratification of which is sought is also most artfully framed to conceal the true nature of the transaction which is more in the nature of an outright sale of portions of the land and far from being a joint venture in the popularly accepted sense of that phrase. It is also drafted to conceal the one-sided nature of the agreement, one-sided in favour of Y & O or its nominees.

Another misleading statement by the chairman in the letter is what he had to say of the FIC approval. Counsel for the plaintiffs had submitted that the FIC is only concerned about ownership and control of Malaysian corporations and does not concern itself with the merits or demerits of business transactions. Again I am constrained to accept this submission because I find it difficult to accept that anyone, least of all a government agency would have given his or its stamp of approval to the one-sided agreement that the agreement of 1 June 1990 appears on the face of it to be.

In my judgment the plaintiffs are entitled to the declaration asked for in prayer (a) of the amended originating summons. The defendants should pay the costs of the originating summons. I see no call for me to give the other orders sought. There will be an order in those terms.

Also found at [1991] 2 CLJ 1155